

In Re: Sentinel Trust Company

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) Case No. 4781
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**RECEIVER'S RESPONSE TO AMERICAN SENIOR LIVING AND
CHANCELLOR HEALTH PARTNERS' MOTION TO AMEND
COURT ORDERS DATED JULY 19, 2004**

American Senior Living (ASL) and Chancellor Health Partners (Chancellor) seek to amend previous orders of the Court by dictating that the Receiver never, no matter what the circumstances, be allowed to seek permission from this Court to pay receivership expenses from the SunTrust Pooled Account. In response thereto, the Receiver objects to the relief sought in the motion for several reasons. First, the motion seeks to amend an order that, by its terms, was not subject to amendment. Second, the motion seeks to unreasonably restrict the options available to the Receiver and seeks to remove even the ability of the Receiver to request the Court to consider matters that might be needed in the future. Third, this motion seeks to hold hostage the payment and/or transfer of tens of millions of dollars which have been separately maintained in the name of various bond issues. Fourth, the motion seeks prohibition of what the Receiver has already stated she will do only if circumstances compel her to do, but the absolute prohibition requested by ASL/Chancellor is unreasonable.

a) ASL/Chancellor Motion Requests Amendment of Order Which, By Its Terms, Is Not Subject to Amendment

While they maintain they are seeking amendment of other orders, it is clear that, in reality, ASL and Chancellor are requesting amendment of the Court's Order Allowing Payment

of Sentinel Receivership Expenses From Recovery of Sentinel Fees From Defaulted Bond Issues and Sentinel Fees from Processing Bond Payments. This is clear because what ASL and Chancellor request is that the Receiver promise never to seek permission to use the SunTrust Pooled Account for payment of the expenses that the receivership incurs. By its own terms, that Order (attached as **Exhibit A**) is not subject to amendment.

The Orders that were subject to a motion seeking amendment after the Lamb Deposition were 1) Order Approving Transfer of Pre-May 18th Fiduciary Investment Accounts When Successor Paying Agent or Trustee is Appointed (attached as **Exhibit B**) and 2) Agreed Order Allowing Transfer of Personal Estate and Trusts to Replacement Executor and Trustee (attached as **Exhibit C**).

It was stated by counsel for ASL, at the July 12, 2004 hearing, that he wanted to investigate where the monies came from that constituted the separately-held investment accounts that were noted in attachments to the Vivian Lamb Affidavits. In ASL/Chancellor instant motion, there is no effort whatsoever taken to examine where the monies that constituted the separately-held investment accounts “came from” or to argue that any particular investment listed in attachments to the Lamb Affidavits should be treated as if it were SunTrust Pooled Account money. In arguing that the two orders should be amended by deleting any particular investment listed in either of the Lamb Affidavits, ASL/Chancellor would run the risk of being seen as causing bond defaults and, thus, alienating any number of bond issuers in a bond community that is fairly small and close-knit. What is painfully obvious is that, rather than calling it straight-up and announcing their position as to which bond issuer should not get which separate investment account, ASL/Chancellor has chosen to leverage a generalized objection into a position wherein they demand that the Receiver never, under any circumstances, be able to

request this Court's permission to use SunTrust Pooled Account funds to pay expenses of the receivership estate.

The ability or inability (or even the willingness or unwillingness) of the Receiver to seek this Court's permission to use SunTrust Pooled Account funds is not at issue. The issue at hand regarding amendment of the two relevant orders is ASL/Chancellor proving that the funds separately held on behalf of certain bond issues (as per the Lamb Affidavits) belong back into the SunTrust Pooled Account. ASL/Chancellor make no effort toward that end and, thus, their Motion to Amend Court Orders should be denied.

b) **ASL/Chancellor Motion Seeks to Unreasonably Restrict Options Available to the Commissioner-in-Possession and His Duly Appointed Receiver**

As just referenced, rather than identifying and proving which separately-held investments they maintain should be placed back in the SunTrust Pooled Account (so as to enable the Receiver and any other interested party to respond), ASL/Chancellor seek to completely foreclose options otherwise available to the Commissioner-in-Possession or Receiver -- they want the Receiver to promise, and have an order entered, that there will never be, under any circumstances, an effort to use SunTrust Pooled Account funds to operate the receivership -- even though, clearly, a major focus of the receivership's operation will involve measures to protect and increase the funds in that very account. Respectfully, ASL and Chancellor are not the Commissioner-in-Possession nor the Receiver -- they have their own self-interests to protect and, apparently, were not vigilant enough to make sure that funds they sent to Sentinel Trust prior to the receivership were placed in separate accounts. What should not be allowed is ASL/Chancellor dictating policy and decision and otherwise foreclosing options available to the

Commissioner-in-Possession and his duly appointed Receiver. Their motion is a blatant attempt to do exactly that and should be denied on that basis as well.

c) **ASL/Chancellor Motion Unjustifiably Seeks to Hold Hostage Payment and Transfer of Tens of Millions of Dollars**

Echoing matters stated above, the Receiver asserts that what ASL and Chancellor are doing is nothing short of attempting to hold hostage 1) payment or transfer of tens of millions of dollars that are being separately held for payment of particular bond issues and 2) the potential default of those bonds and disastrous consequences such would have -- the ransom to free the hostage being an order of this Court to prohibit the Receiver, under any circumstances, to seek permission to use SunTrust Pooled Account funds to pay expenses of the receivership.

This attempt is unjustified. The Receiver has already stated that she would petition the Court prior to any effort to use SunTrust Pooled Account funds and that she would do so only if circumstances compelled such an effort. That should be enough for ASL/Chancellor. Their attempt through this motion to hold hostage payments or transfers of the separately-held investment accounts (and the parallel threat of default for the pertinent issues) should not be allowed.

d) **ASL/Chancellor's Motion Seeks Relief Which the Receiver Has Materially Agreed to In the First Instance**

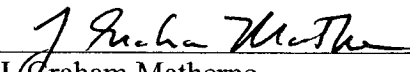
As mentioned immediately above, the Receiver has already stated numerous times that she does not desire to pay receivership expenses from the SunTrust Pooled Account. The Receiver has stated that she will do so only 1) if the circumstances dictate that she request such from the Court and 2) upon motion, hearing and order of this Court. Another safeguard in relation to this is that the receivership fees and expenses are extensively reviewed and approved by the Department of Financial Institutions' staff and the Commissioner-in-Possession and also

reviewed and approved by this Court. Therefore, the Receiver's position on this issue is not materially in contradiction to what ASL/Chancellor seek. What the Receiver cannot agree to, and what this Court should not order, is that the Receiver have her hands tied behind her back in relation to reacting to, and seeking an order on, what future matters may dictate.

e) **Conclusion**

Accordingly, for the reasons stated herein, the Receiver responds to ASL/Chancellor's Motion to Amend Court Orders and asserts that said motion should be denied.

Respectfully submitted,



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